

Introduced by Senator Hollingsworth

February 22, 2007

An act to amend Section 6605 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 503, as introduced, Hollingsworth. Sexually violent predators.

Existing law provides that the Director of Mental Health shall provide each person who is committed as a sexually violent predator with an annual written report which shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional or unconditional release is in the best interests of the committed person and the community, as specified.

Existing law also provides that if the department determines that the person is no longer a sexually violent predator or conditional release is in the best interests of the person and that conditions can be imposed to adequately protect the community, the director shall authorize the committed person to petition the court for conditional release or unconditional discharge, as specified.

Existing law further provides that upon receipt of such a petition for conditional release or unconditional discharge the court shall hold a show cause hearing to determine that probable cause exists for relief. If probable cause is found, then the court shall set a hearing on the issue.

This bill would incorporate additional provisions, that had been added by the Legislature in 2006, that would provide that at the hearing on the issue of whether the committed person should be conditionally released or unconditionally discharged, the committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed, and a jury shall be so instructed.

This bill would further provide that completion of treatment programs shall be a condition of release.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6605 of the Welfare and Institutions Code
2 is amended to read:

3 6605. (a) A person found to be a sexually violent predator and
4 committed to the custody of the State Department of Mental Health
5 shall have a current examination of his or her mental condition
6 made at least once every year. The annual report shall include
7 consideration of whether the committed person currently meets
8 the definition of a sexually violent predator and whether conditional
9 release to a less restrictive alternative or an unconditional release
10 is in the best interest of the person and conditions can be imposed
11 that would adequately protect the community. The *State*
12 Department of Mental Health shall file this periodic report with
13 the court that committed the person under this article. The report
14 shall be in the form of a declaration and shall be prepared by a
15 professionally qualified person. A copy of the report shall be served
16 on the prosecuting agency involved in the initial commitment and
17 upon the committed person. The person may retain, or if he or she
18 is indigent and so requests, the court may appoint, a qualified
19 expert or professional person to examine him or her, and the expert
20 or professional person shall have access to all records concerning
21 the person.

22 (b) If the *State* Department of Mental Health determines that
23 either: (1) the person's condition has so changed that the person
24 no longer meets the definition of a sexually violent predator, or
25 (2) conditional release to a less restrictive alternative is in the best
26 interest of the person and conditions can be imposed that
27 adequately protect the community, the director shall authorize the
28 person to petition the court for conditional release to a less
29 restrictive alternative or for an unconditional discharge. The
30 petition shall be filed with the court and served upon the
31 prosecuting agency responsible for the initial commitment. The
32 court, upon receipt of the petition for conditional release to a less
33 restrictive alternative or unconditional discharge, shall order a

1 show cause hearing at which the court can consider the petition
2 and any accompanying documentation provided by the medical
3 director, the prosecuting attorney or the committed person.

4 (c) If the court at the show cause hearing determines that
5 probable cause exists to believe that the committed person's
6 diagnosed mental disorder has so changed that he or she is not a
7 danger to the health and safety of others and is not likely to engage
8 in sexually violent criminal behavior if discharged, then the court
9 shall set a hearing on the issue.

10 (d) At the hearing, the committed person shall have the right to
11 be present and shall be entitled to the benefit of all constitutional
12 protections that were afforded to him or her at the initial
13 commitment proceeding. The attorney designated by the county
14 pursuant to subdivision (i) of Section 6601 shall represent the state
15 and shall have the right to demand a jury trial and to have the
16 committed person evaluated by experts chosen by the state. The
17 committed person also shall have the right to demand a jury trial
18 and to have experts evaluate him or her on his or her behalf. The
19 court shall appoint an expert if the person is indigent and requests
20 an appointment. The burden of proof at the hearing shall be on the
21 state to prove beyond a reasonable doubt that the committed
22 person's diagnosed mental disorder remains such that he or she is
23 a danger to the health and safety of others and is likely to engage
24 in sexually violent criminal behavior if discharged. *The committed*
25 *person's failure to engage in treatment shall be considered*
26 *evidence that his or her condition has not changed, for purposes*
27 *of any court proceeding held pursuant to this section, and a jury*
28 *shall be so instructed. Completion of treatment programs shall be*
29 *a condition of release.*

30 (e) If the court or jury rules against the committed person at the
31 hearing conducted pursuant to subdivision (d), the term of
32 commitment of the person shall run for an indeterminate period
33 from the date of this ruling. If the court or jury rules for the
34 committed person, he or she shall be unconditionally released and
35 unconditionally discharged.

36 (f) In the event that the State Department of Mental Health has
37 reason to believe that a person committed to it as a sexually violent
38 predator is no longer a sexually violent predator, it shall seek
39 judicial review of the person's commitment pursuant to the
40 procedures set forth in Section 7250 in the superior court from

- 1 which the commitment was made. If the superior court determines
- 2 that the person is no longer a sexually violent predator, he or she
- 3 shall be unconditionally released and unconditionally discharged.

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